IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 690 of 2002
with
FIRST APPEAL No 691 of 2002
and
CIVIL APPLICATIONS NOS. 2638 & 2639 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW INDIA INSURANCE CO LTD.

Versus

MADHAVSANG NATHUJI DARBAR

Appearance:

MS MEGHA JANI for appellant/applicant in all matters

MR NIRAV C THAKKAR for claimants in all matters

MR VIBHUTI NANAVATI for United India Insurance Company in First Appeal No.690 of 2002 and MS AVNI MEHTA, for United India Insurance Company in First Appeal No.691 of 2002.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 16/09/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE H.K. RATHOD)

Heard learned Advocate Ms.Megha Jani appearing on behalf of the appellant-New India Assurance Company Ltd., learned Advocate Mr.Nirav C.Thakkar appearing on behalf of the original claimants, in all these matters and learned Advocate Mr.Vibhuti Nanavati appearing on behalf of the United India Insurance Company in First Appeal No.690 of 2002 and learned Advocate Ms.Avni Mehta, appearing on behalf of the United India Insurance Company in First Appeal No.691 of 2002.

2. Admit. Notice of admission is waived by learned Advocates appearing for the respective respondents.

3. Both these appeals are filed by the appellant Insurance Company, challenging the judgment and award dated 23rd October 2001 passed by the Motor Accident Claims Tribunal (Aux.), Jamnagar in Claim Case Nos.451 of 1998 and 452 of 1998. The Tribunal has partly allowed the Claim Case No.451 of 1998 and dismissed the claim in respect of opponent No.4 United India Insurance Company. In respect of Claim Case No.452 of 1998 also, the Tribunal partly allowed the same. The Tribunal awarded the compensation of Rs.2,14,200/- with running interest at the rate of 9% per annum from the date of the petition till realisation with proportionate costs, in Claim Case No.451 of 1998 and directed the opponents nos. 1, 2 and 3, who are held to be jointly and severally liable to pay the said amount. In respect of Claim Case No.452 of 1998, the Tribunal awarded compensation of Rs.3,06,000/with running interest at the rate of 9% per annum from the date of petition till realisation with proportionate costs. The Tribunal directed the opponents Nos.1, 2, 3 and 4, who are held to be jointly and severally liable to pay the said amount. The Tribunal also directed the opponents of both the Claim Cases to deposit the said amount before the Tribunal within a period of one month from the date of the said order. The Tribunal also ordered that out of the amount of award, the claimants shall invest 60% amount in any nationalised Bank or in any Government security of the choice of the claimants for a period of five years with a provision to collect the monthly or periodical interest and the rest

of 40% of the award be paid to the claimants in cash by way of account payee cheque in both the claim petitions. The Tribunal has also made it clear that the amount of Court fee stamp, if any, be deducted from the amount payable to the claimants and also the amount of interim compensation, if any, be also deducted from the amount payable to the claimants in both the claim petitions and after deduction of such amount, the remaining amount plus the entire amount of costs and interest shall be paid 40% in cash to the claimants in both the claim petitions by way of account payee cheques and the remaining amount of 60% be deposited in any nationalised Bank or in any Government security of their choice. The Tribunal also directed in respect to the Claim Case No.452 of 1998 that the whole amount of compensation including the interest and costs of claimant No.4 shall be deposited in fixed deposit for a period upto the age of majority. It was further directed that the amount deposited in the fixed deposit by the claimants of both the claim petitions are not permitted to be withdrawn without prior permission of the Tribunal nor any loan or advance shall be permitted to be raised by the Bank without prior permission of the Tribunal against the said deposit.

4. Learned Advocate Ms.Megha Jani appearing on behalf of the appellant in both these appeals raised a contention that the Tribunal has committed an error by applying the multiplier of 15 years and in not deducting 2/3rd amount from the income of the deceased towards his personal expenses as the claimants are aged parents. She made it clear before this Court that there was no contention raised by the Insurance Company in respect of the negligence on the part of both the drivers, which has been determined by the Tribunal. She also raised a contention about the income of the deceased though there was no documentary evidence produced by the claimants before the Tribunal and in absence of any documentary evidence, the Tribunal has committed an error in fixing the income of the deceased at Rs.2,400/- per month in both the cases. She also raised a contention that, looking to the age of the parents of the deceased, who are claimants before the Tribunal, the Tribunal has committed an error in deducting 1/3rd amount from the income of the deceased. But, according to her, this Court has, in fact, issued the notice for final disposal of the matter only on the question of multiplier which has been adopted by the Tribunal. In short, her submission is that, looking to the age of the claimants, the multiplier of 15 years which has been adopted by the Tribunal, is not correct and in any case, it may be 10 or 12, because in both the cases, the age of the claimants

are more than 50 years.

5. Learned Advocate Mr.Nirav Thakkar appearing on behalf of the original claimants has submitted that the Tribunal has not committed any error while determining the income of the deceased and also not committed any error while applying the multiplier of 15 years in both the cases. He submitted that in both the cases, there was sufficient evidence from the employer to prove the income of the deceased, but the Tribunal has not fixed the income of the deceased as per the evidence given by the employer and on the contrary, the Tribunal has fixed less amount as income of the deceased. He also submitted that the Tribunal has ignored the future prospects of the income of the deceased and only the existing salary or income has been taken into account while awarding the compensation. He, therefore, submitted that the contention which has been raised by learned Advocate Ms.Megha Jani in respect of the multiplier is not just and if the future prospects and income of the deceased is taken into account, it would come to more than Rs.5,000/6,000 per month and if 1/3rd is deducted, it would come to almost the same figure of compensation as has been awarded by the Tribunal. Therefore, in reality, there may not be any difference in the compensation which has been awarded by the Tribunal. He, therefore, submitted that the amount of compensation awarded by the Tribunal is fair, just and reasonable and does not warrant any interference by this Court. He also submitted that in both the cases, the persons died were of 24-25 years and that they were the bread-winners of the family. He further submitted that the entire family was being maintained by the deceased in both the cases and there were minor brothers also and that they were being maintained along with the parents by the deceased. Therefore, considering this aspect also, the Tribunal has rightly awarded the amount of compensation and no interference is required by this Court.

6. In light of the submissions made both the learned Advocates, the brief facts of both the claim petitions are as under:

That on 16th March 1992, at about 5.30 p.m., the alleged accident has happened near Vadodara in between Alamgir to Varana. As per the case of the claimants, the deceased was driver in the truck bearing No.GTP 5368 and he was coming from Surat to Jamnagar after loading sugarcane. According to the claimants, the deceased was driving the truck on right side and in slow speed and with proper care and when he reached near the turn of

Alamgir to Varana, another truck bearing No.RJ-13G-0707 came in full speed in rash and negligent manner and due to the same, the said truck dashed with his truck No. GTP 5368 and due to the collision with each other, deceased Gopalsang Madhavsang Darbar died due to the serious accidental injuries. The claimants submitted before the Tribunal that deceased Gopalsang had taken all care and caution and he was in very slow speed and on his right side, but due to the rash and negligent driving on the part of the driver of truck No. RJ-13G-0707, the said accident has taken place and in the said accident, the truck driver of the truck bearing No.GTP 5368 died due to the accidental injuries. According to the claimants, deceased Gopalsang was able bodied, young and he had no bad habits and he was a hardworker. Deceased Gopalsang was doing the service of driver since many years and thus he was earning and was also doing labour work and earning from the agricultural work and thereby he was earning Rs.3,000/- per month. Gopalsang was also very hard worker and he longed for to make a bright future of his brother and also intended to purchase his own truck and he was maintaining the entire family including minor brothers. Ultimately, on the basis of these facts, Claim Petition No. 451 of 1998 was filed claiming the amount of compensation of Rs.4,50,000/-, under the provisions of the Motor Vehicles Act.

7. In respect of Claim Petition No.452 of 1998, the alleged accident occurred on 16th March 1992 and at that time, deceased Meraman Alashi was coming from Surat to Jamnagar by hiring a truck loaded with sugarcane and he was travelling in truck bearing No.GTP 5368 by paying the fare. When they reached near Alamgir-Varana, at about 5.30 p.m., another truck bearing No.RJ-13-0707 came all of a sudden in very fast and excessive speed and due to the rash and negligent driving of the said truck driver, it dashed with the truck No.GTP 5368 in which the deceased Meraman was travelling with his goods and thus, both the trucks were collided with each other and therefore, the alleged accident took place and deceased Meraman sustained various serious accidental injuries on his body and he died. Meraman was aged about 24 years and he was able bodied and healthy. According to the claimants, deceased used to bring sugarcane and used to sell the same in Jamnagar and thus, he used to earn Rs.3,000/3,500/- per month. Deceased was the earning member in their family and due to his accidental death, the claimants had to suffer much economic loss and also suffered pain, shock and suffering. The claimants further submitted that the said accident occurred because of the rash and negligent driving of the truck bearing

No.RJ-13G-0707 and ultimately, on the basis of these facts, the claim Petition No.452 of 1998 was filed claiming the amount of compensation of Rs.4,50,000/- under the Motor Vehicles Act.

8. Before the Tribunal, in Claim Petition No.451 of 1998, the opponent-Insurance Company filed the written statement at Exh.20 wherein it was contended that the claim petition is false and be dismissed forthwith. The claimants have no right to file nor have any cause arisen for filing the claim petition. The said Insurance Company has disputed the name, age, occupation, address, income of the deceased, the date, time and place of the alleged accident, the registration number of the vehicle involved, the names and address of the driver, owner and insurer of the alleged vehicle and the relationship of the deceased with the applicants. The Insurance Company has also denied the contention that deceased Gopalsang had gone with the truck bearing No.GTP 5368 from Jamnagar to Surat for bringing sugarcane and was coming back from Surat to Jamnagar. Ultimately, in the written statement, a request has been made by the Insurance Company to dismiss Claim Petition No.451 of 1998. Similarly, in Claim Petition No.452 of 1998, the same defence has been taken by way of filing written statement at Exh.20 by opponent No.2.

The Tribunal has, thereafter, framed the issues vide Exh.38 in Claim Case No.451 of 1998 and vide Exh.36 in Claim Case No.452 of 1998. The Tribunal has framed the issue as to whether the applicants prove that due to rash and/or negligent driving by the drivers of the truck No.GTP 5368 and truck No.RJ-13G-0707, the alleged accident has taken place and due to the accidental injuries the deceased died and as to whether the claimants are entitled to get the compensation as claimed for against the opponents, and if yes, what amount and from whom?

9. Before the Tribunal, the claimants were examined and for proving the income part, the employer was examined by the claimants. In respect of Claim Petition No.452 of 1998, the father of the deceased, namely, Alishabhai Arjanbhai Vashra, aged about 50 years was examined vide Exh.49 and vide Exh.60, one Dhirubha Jhala, was examined. In Claim Petition No.451 of 1998, father of the deceased, namely, Madhavsang, aged about 50 years was examined vide Exh.40, one Jayvantsinh Jadeja was examined vide Exh.56 and one Bhikhubha Vadher was examined vide Exh.61, who was the employer.

10. Learned Advocate Ms.Megha Jani appearing on behalf of the appellant Insurance Company in both these appeals has not raised any contention about the negligence on the part of the deceased and therefore, we are not going into the question of the negligence which has been examined by the Tribunal in the judgment.

11. The Tribunal has considered the oral evidence of the father of the deceased and the employer of the deceased. In Claim Petition No.451 of 1998, the evidence of one Jayvantsinh Jadeja at Exh.56 has been considered. While dealing with the question of negligence, the Tribunal has come to the conclusion, as can be seen from paragraph 14 of the judgment, that looking to the facts and circumstances of the case and looking to the documentary evidence produced by the parties and also looking to the complaint and the panchnama of the scene of offence, it reveals that the alleged accident happened in between two trucks and in the said accident, both the vehicles were trucks and therefore, it has been observed that it is very essential to fix the negligence of the vehicles as to which one was much more negligent in driving so that the alleged accident has happened. After considering the entire evidence on record, the Tribunal has come to the conclusion that looking to the entire facts and circumstances of the case, there was 30% negligence on the part of the deceased driver of truck bearing No.GTP 5368 and 70% negligence on the part of the truck bearing No.RJ-13G-0707 for the alleged accident.

The Tribunal has thereafter examined the question of quantum of compensation on the basis of the oral evidence. The Tribunal has also observed that deceased Gopalsang was a tort feasor and he had not taken any care at the relevant time and therefore, 30% negligence of the driver of the truck bearing No.GTP 5368 can be fixed for the said accident and a tort feasor cannot claim compensation against his own vehicle's insurance Company which he was driving at the relevant time. Therefore, the Tribunal has held that the claimants of Claim Petition No.451 of 1998 cannot get any compensation from the insurance Company of the vehicle bearing No.GTP 5368, i.e. the opponent - United India Insurance Company and against that Insurance Company, Claim Petition No.451 of 1998 has been dismissed.

Thereafter, the Tribunal has examined the income part of the deceased Gopalsang. Deceased Gopalsang was aged about 25 years and he was earning Rs.3,000/3,500/per month by driving the truck and in spare time, he was driving tractor in agricultural land. The Tribunal also

observed that looking to the records and depositions and evidence, deceased Gopalsang must be earning something, however, for his income, there is no exact documentary evidence. Therefore, the Tribunal has assessed the income of the deceased at Rs.2,400/- per month in absence of documentary evidence. As the deceased was unmarried, 1/3rd amount had been deducted from the income of the deceased and Rs.1,600/- has been taken as the income of the deceased. Looking to the age of the deceased, a multiplier of 15 years has been considered and the total amount comes to Rs.2,88,000/-. Thereafter the Tribunal has granted Rs.10,000/- under the head of loss of expectation of life and Rs.5,000/- has been awarded for the pain, shock and agony and an amount of Rs.3,000/- has been awarded under the head of funeral expenses and religious ceremony. Thus, the total compensation awarded was Rs.3,06,000/- in Claim Petition No. 451 of 1998.

Thereafter, in paragraph 20, the Tribunal has considered 30% negligence and therefore, an amount Rs.91,800/- has been deducted being 30% responsibility of the deceased and hence, an amount of Rs.2,14,200/- has been awarded as compensation, with 9% interest per annum with proportionate costs.

12. In respect of Claim Petition No.452 of 1998, wherein deceased Meraman, aged about 24 years was died, the Tribunal has considered the income at Rs.2,400/- and the same pattern has been applied as in the case of Claim Petition No.451 of 1998. After deducting 1/3rd amount from his income and the multiplier of 15 years has been considered by the Tribunal and ultimately an amount of Rs.2,88,000/- has been awarded towards dependency income to the claimants, Rs.10,000/- under the head of loss of expectation of life, Rs.5,000/- under the head of mental, shock, pain and agony, and Rs.3,000/- under the head of funeral and religious expenses. Thus, a total amount of Rs.3,06,000/- with interest at the rate of 9% per annum and proportionate costs has been awarded.

13. We have perused the record of both the cases. The Tribunal has applied the same reasoning while granting the compensation in both the cases because both the deceased persons were aged about 24 and 25 years. Almost similar notional income has been fixed by the Tribunal and the same multiplier has been adopted. The only difference between the two cases remains that in the case of Gopalsang, the Tribunal has deducted 30% amount due to the negligence on his part, because he was driving the truck bearing No.GTP 5368.

14. In light of the above facts and circumstances and considering the reasoning recorded by the Tribunal, we now proceed to examine the contention which has been raised by learned Advocate Ms.Megha Jani appearing for the appellant in both the appeals.

The contention which has been raised by Ms.Megha Jani is that, looking to the age of the claimants, i.e. about 50 years, the Tribunal ought to have deducted 2/3rd amount instead of 1/3rd amount from the income of the deceased. In respect of this submission, it is necessary to note that in Claim Petition No.451 of 1998, applicants Nos.1 and 2 are the father and mother of deceased, while applicant No.3 is minor son, and in Claim Petition No.452 of 1998, applicants Nos.1 and 2 are the father and mother of the deceased, but the applicants Nos.3 and 4 are minor brothers of the deceased. Therefore, the submission which has been made by learned Advocate Ms.Megha Jani that looking to the age of the claimants - parents, the Tribunal ought to have deducted 2/3rd of the income which has been notionally fixed by the Tribunal and only 1/3rd has been deducted. Looking to the name of the claimants in both the cases, minor brothers are there and considering one more aspect that in both the cases, we have gone through the entire award of the Tribunal and we see that the Tribunal has assessed the notional income of the deceased without any base though there was sufficient evidence of the employer of the deceased had deposed that the deceased was having the income of Rs.3,000/3,500/per month, the Tribunal has assessed the income at Rs.2,400/per month and has actually not considered the future prospects of income of the deceased. In both the cases, the Tribunal has assessed the income on the basis of the existing circumstances at the time of death of the deceased. According to our opinion, the Tribunal has assessed the said income not in accordance with the oral evidence before it though there was a clear evidence of the employer that the deceased was earning at the time of death, Rs.3,000/3,500/- per month. No reasons have been given by the Tribunal for reducing this income part in respect of both the deceased. The Tribunal has not considered the future prospects of income of the deceased in both the cases and only relied upon the existing income, though the employer of the deceased has categorically stated before the Tribunal with regard to the said aspect. The submission of Ms.Megha Jani appearing for the appellant is that the multiplier of 15 years is on a higher side and notice has been issued by this Court only in respect of multiplier. She has vehemently submitted that looking to the age of the claimants, the multiplier of 10 or 12 may be considered.

However, if we consider the submission of learned Advocate Ms.Megha Jani in respect of the multiplier, then we have to consider one more aspect that the Tribunal has ignored in considering the future prospects of income of the deceased in both the cases. If we consider the future prospects of income of the deceased in both the cases, and if we ultimately reduce the multiplier considering the age of the claimants, then according to our opinion, the amount must be more or less the same because on one side, the income must have to increase considering the future income of the deceased. Therefore, according to our opinion, the Tribunal has awarded a reasonable, just and fair compensation to the claimants. If we calculate the amount of compensation as suggested by Ms.Megha Jani and if we also calculate the compensation as suggested by her while keeping in mind future income of the deceased then according to our opinion, the ultimate result would be more or less the same. Therefore, considering this aspect of the matter in both the cases, the contention raised by Ms.Megha Jani may be of some substance, but looking to the facts and circumstances of the case, and the evidence on record, that in both the cases, the deceased were earning more than Rs.3,000/- per month and despite that fact, the Tribunal has assessed the notional income of the deceased at Rs.2,400/- and has not at all considered the future prospects of income of both the deceased. The accident occurred on 16th March 1992. The salary of a driver at the relevant time and considering the same as on date, there may be be a high rise by way of future prospects of income, and if we reduce the multiplier, the result would be the same, considering the material on record.

At this stage, we are mentioning the views which have been taken by the apex court in similar circumstances while awarding compenstion to the claimants keeping in view the future prospects of the income of the deceased by applying the method which has been considered as proper method for arriving at an average income of the deceased per month. The view taken by the apex court in case of Smt. Sarla Dixit and another v. Balwant Yadav and others reported in AIR 1996 SC 1274. In the said decision, the apex court has considered the decision in case of Hardeo kaur and Ors. v. Rajasthan State Transport Corporation & Anr. (1992) 2 SCC 567, for computing compensation available to the claimant-dependents of deceased. The apex court has also considered the decision in case of General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) & Ors. (1994) 2 SCC 176 wherein the apex court has observed as under:

"There were two methods adopted for determination and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in Davies case and the second in Nance v. British Columbia Electric Railway Co. Ltd.

After considering the said two earlier decisions, and two methods, the apex court has examined the case which was before it and has observed as under while coming to the conclusion for fixing average monthly income of the deceased :

"The deceased was the only breadwinner in the family.He was cut short in the prime period at the age of 27 by the accident caused by the truck.He had put in seven years of military service by that time. He was a captain and was fully qualified for promotion to the rank of a major at the time of his death.His gross salaryat the time of his death was Rs.1543.00 p.m. He had large number of years of military service ahead of him which would have certainly taken himto higher echelons in the military career.

Held, deceased was earning gross salary of Rupees 1543/- per month Rounding it up to figure of Rs.1500/- and keeping in view all the future prospects which the deceased had in stable military service in the light of his brilliant academic record and performance in the military service spread over 7 years and also keeping in view the other imponderables like accidental death while discharging military duties and the hazards of military service,it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death i.e. upto Rs.3000.00 p.m. had he survived in life and had successfully completed his future military career till the time of superannuation.The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely Rs.1500.00 p.m. to the maximum which he would have otherwise got had he not died a premature death i.e. Rs.3000.00 per month and dividing that figure by two. Thus, the average gross monthly salary spread over his entire future career had it been available would work out to Rs.4500.00 divided by 2 i.e. Rs.2200.00. Rupees 2200.00 p.m. would have been

> the gross monthly average income available to the family of the deceased had he survived as a bread winner. From that gross monthly income at least 1/3rd will have to be deducted by way of his personal expenses and other liabilities like payment of income tax etc. That would roughly work out to Rs.730.00 p.m. but even taking a higher figure of Rs.750.00 p.m. and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs.2200.00 p.m. balance of rupees 1450.00 which can be rounded up to Rs.1500.00 per month would have been the average amount available to the family of the deceased i.e. his dependents. It is this figure which would be the datum figure per month which on annual basis would work out to Rs.18000.00. Rs.18000.00 therefore would be the proper multiple and which would be available, for capitalization for computing the future economic loss suffered by the dependents on account of untimely death of the bread winner.As the age of the deceased was 27 years and few months at the time of his death the proper multiplier would be 15. Rs.18000.00 multiplied by 15 will work out to Rs.2,70,000. To this figure will have to be added the conventional figure of Rs.15,000.00 by way of loss of estate and consortium etc. That will add to a total figure of Rs.2,85,000.00 This is the amount which the appellants would be entitled to get by way of compensation. "

While keeping in mind the method which has been adopted by the apex court in reported case as referred to above, the apex court has taken into consideration all the future prospective income of the deceased.We are examining the facts of both the present case. The tribunal has assessed the monthly income of both the deceased at Rs.2400.00 though there was a clear evidence of the employer to establish the actual monthly income of Rs.3000.00 to Rs.3500.00. But apart from that, whatever monthly income has been assessed by the tribunal by keeping in mind the monthly income of Rs.2400.00, then, keeping in view all the future prospects which the deceased had in service and in business and also keeping in view the other imponderables like accidental death while discharging duties and the hazards of business, it will not be unreasonable to predicate that his gross monthly income would have shot up to at least double than what he was earning at the time of his death i.e. upto Rs.4800.00 p.m. had they survived in life and had successfully completed their future career till the time

of retirement. The average gross future monthly income could be arrived at by adding the actual gross income at the time of death, namely Rs.2400/- p.m. to the maximum which he would have otherwise got had he not died a premature death i.e. Rs.4800/- per month and dividing that figure by two. Thus, the average gross monthly salary spread over his entire future career had it been available would work out to Rs.7200/- divided by 2 i.e. Rs.3600/- Rupees 3600/- p.m. would have been the gross monthly average income available to the family of the deceased had he survived as a bread winner. From that gross monthly income at least 1/3rd will have to be deducted by way of his personal expenses and other liabilities like payment of income tax etc. That would roughly work out to Rs.1200/- p.m. and deducting the same by way of average personal expenses of the deceased from the average gross earning of Rs.2400/- p.m. balance would have been the average amount available to the family of the deceased i.e. their dependents. It is this figure which would be the datum figure per month which on annual basis would work out to Rs.28800.00 Rs.28800/- therefore would be the proper multiple and which would be available, for capitalization for computing the future economic loss suffered by the dependents on account of untimely death of the bread winner. Considering the age of the deceased at the time of their death the proper multiplier would be 15. Rs.28800.00 multiplied by 15 will work out to Rs.4,32,000.00. If the submission of Ms.Jani that the multiplier of 10 or 12 should be taken is considered, then, by taking the multiplier of 10, the figure would come to Rs.2,88,000.00 and by taking the multiplier of 12, the figure would come to Rs.3,35,000.00. Keeping in view this calculation which has been based upon the method adopted by the apex court while considering the prospective income of the deceased and also considering the award of compensation made by the tribunal in respect of both the cases, it comes to almost same figure near to the figure which has been calculated by us, in case of Gopalsang, the tribunal has come to the conclusion while deciding dependency income of the claimants at Rs. 288000.00 and after adding Rs.10000.00 for loss of expectation of life and Rs.5000.00 for pain,shock and mental agony and Rs.3000.00 towards the funeral expenses, it would come to Rs.3,06,000.00 and if 30 per cent negligence on the part of the deceased driver has been deducted, then, it would come to Rs. 2,14,200.00. Likewise, in case of Meraman Alsi, the tribunal has come to the conclusion while deciding dependency income of the claimants at Rs. 288000.00 and after adding Rs.10000.00 for loss of expectation of life and Rs.5000.00 for

pain,shock and mental agony and Rs.3000.00 towards the funeral expenses, it would come to Rs.3,06,000.00. Therefore, in view of these calculations, which are tallying with the method adopted by the apex court while keeping in mind the future prospective income of the deceased,according to our opinion, almost same figure near to the figure awarded by the tribunal in both the cases is available. In both the cases, the tribunal has not taken into account future prospective income of the deceased while deciding the dependency income of the claimants and,therefore, if the contention of Ms.Jani is taken into consideration that instead of 15, if the multiplier of 10 or 12 is taken into consideration,then also, according to our opinion, roughly same figure is available which is near to the figure of compensation awarded by the tribunal and, therefore, it will make no much difference even if we take the multiplier of 12 or 10 as contended by Ms. Megha Jani and, therefore, we are not accepting her contention in that regard and are rejecting the same. It is required to be noted that the notice has been issued by this court only in respect of multiplier and, therefore, according to our opinion, ultimately, the court has to see that a reasonable, just and fair compensation has been awarded or not which would satisfy the needs of the claimants or the dependents of the deceased. According to our opinion, the claimants are not only parents but minor brothers are also there who were dependents of the deceased and, therefore, considering that fact, according to our view, the award of compensation made by the tribunal is quite just, proper and balancing award and we are in complete agreement with the findings given by the tribunal and there is no possibility to have a different view or to come to a different conclusion on the basis of the facts which have been decided by the tribunal.

Therefore, according to our opinion, the Tribunal has rightly awarded the compensation in both the cases and no error has been committed by the Tribunal and the award is just, reasonable and fair. There is no substance in the contention raised by Ms.Megha Jani, learned Advocate appearing on behalf of the appellant and the appeal is dismissed. There shall be no order as to costs.

15. In view of the dismissal of the main appeals, the Civil Applications for stay do not survive and they stand rejected accordingly. Notices issued therein shall stand discharged.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)

Sreeram.